

Flexibility Analysis. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our Initial Regulatory Flexibility Analysis regarding the prevalence of small businesses in the affected industries.

242. Comments on the Initial Regulatory Flexibility Analysis must be filed in accordance with the same filing deadlines as comments on this Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.⁴⁰⁹

B. Paperwork Reduction Analyses

243. This Notice contains proposed information collection requirements applicable to the public. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this Notice, as required by the Paperwork Reduction Act of 1995.⁴¹⁰

244. Public and agency comments regarding the information collections contained in this Notice are due on or before 60 days after the publication of the Notice in the Federal Register.

245. Comments submitted on information collections contained in this Notice should address:

- Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility.
- The accuracy of the Commission's burden estimates.
- Ways to enhance the quality, utility, and clarity of the information collected.
- Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

⁴⁰⁹ 5 U.S.C. § 603(a).

⁴¹⁰ 44 U.S.C. § 3506(c)(2).

246. In addition to filing these comments on information collections contained in the Second Notice of Proposed Rulemaking with the Secretary, a copy of any such comments should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov. Furthermore, a copy of any such comments should be submitted to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, D.C. 20503 or via the Internet at fain_t@al.eop.gov. For additional information regarding the information collections contained herein, contact Judy Boley.

C. Ex Parte Presentations

247. This Notice is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Commission rules.⁴¹¹

D. Pleading Dates

248. Pursuant to applicable procedures set forth in Sections 1.1415 and 1.419 of the Commission's Rules,⁴¹² interested parties may file comments to this Notice on or before **December 22, 1997**, and reply comments on or before **January 12, 1998**. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Service, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857-3800.

E. Further Information

249. For further information concerning this rulemaking proceeding, contact the following staff of the Wireless Telecommunications Bureau, Federal Communications Com-

⁴¹¹ See generally Sections 1.1202, 1.1203, and 1.1206(a) of the Commission's Rules, 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

⁴¹² 47 C.F.R. §§ 1.1415, 1.419.

mission, Washington, D.C. 20554: Marty Liebman, Mary Woytek, Ed Jacobs, David Siehl, or Jon Reel, Policy Division, at (202) 418-1310.

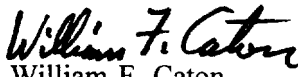
VI. ORDERING CLAUSES

250. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 10, 201, 202, 303(b), 303(g), 303(j), 303(r), and 403 of the Communications Act, 47 U.S.C. §§ 151, 154(i), 160, 201, 202, 303(b), 303(g), 303(j), 303(r), 403, that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described in this Second Notice of Proposed Rulemaking, and that COMMENT IS SOUGHT on these proposals.

251. IT IS FURTHER ORDERED that the Secretary shall send a copy of this Second Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.⁴¹³

252. IT IS FURTHER ORDERED that the Petition for Rulemaking filed on October 19, 1995, on behalf of the National Communications System IS GRANTED IN PART TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

⁴¹³ Pub. L. No. 96-354, 94 Stat. 1165, 5 U.S.C. §§ 601-612 (1980).

APPENDIX A**Initial Regulatory Flexibility Analysis**

As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this Second Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above in paragraph 248 of the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Action

This rulemaking proceeding was initiated to propose service rules for 24 megahertz of spectrum in the 746-806 MHz band. The spectrum, which is currently used by television (TV) Channels 60-69, is being made available to meet various public safety communications needs.

This rulemaking proceeding was also initiated to seek comment regarding whether certain commercial mobile radio service (CMRS) providers should be authorized to offer priority access service on a voluntary basis for purposes of enhancing national security and emergency preparedness (NSEP) functions. Priority access service will enable NSEP personnel and other public safety users to receive priority to available channels during emergencies. The rulemaking proceeding is also initiated to secure comment on other issues concerning such priority access.

We endeavor to (1) provide for modern and innovative communications at high levels of efficiency and effectiveness required by the Nation's public safety entities; (2) explore the possibility of certain commercial services being used for public safety applications; and (3) protect TV stations on Channels 60-69 during the transition to digital television (DTV).

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² See 5 U.S.C. § 603(a).

³ See *id.*

B. Legal Basis

The proposed action is authorized under Sections 1, 4(i), 10, 201, 202, 303(b), 303(g), 303(j), 303(r), and 403 of the Communications Act, 47 U.S.C. §§ 151, 154(i), 160, 201, 202, 303(b), 303(g), 303(j), 303(r), 403.

C. Reporting, Recordkeeping, and Other Compliance Requirements

The Commission proposes the filing of regional plans drafted by planning committees made up of representatives of the public safety community. Applicants for public safety licenses may be required to make submissions to the planning committees justifying their requests for spectrum, and will be required to submit applications for spectrum licenses on Form 601. The proposals under consideration in the Notice include the possibility of imposing recordkeeping and reporting requirements on individuals or organizations involved in establishing a national planning process to develop a nationwide interoperability plan, on individuals or organizations that may assist us in developing technical standards, and on small government agencies who may request extended implementation. We request comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of this proceeding.

With respect to priority access service, the proposals of the Commission in this Notice do not entail reporting, recordkeeping, or other compliance requirements. If, however, there are matters pertaining to such requirements that relate to those issues on which we also seek comment in this Notice, we invite commenters to address how those matters may affect small entities who may be potential providers of priority access service.

D. Description and Number of Small Entities Involved

This Notice will affect TV station licenses on Channels 60-69, public safety entities, and commercial mobile radio service (CMRS) providers. Commenters are requested to provide information regarding how many entities (overall) and how many small entities would be affected by the proposed rules in the Notice.

(a) Television Stations**(1) Television Station Estimates Based on Census Data**

The Notice will affect full service TV stations, TV translator facilities, and low power TV (LPTV) stations. The Small Business Administration defines a TV broadcasting station

that has no more than \$10.5 million in annual receipts as a small business.⁴ TV broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by TV to the public, except cable and other pay TV services.⁵ Included in this industry are commercial, religious, educational, and other TV stations.⁶ Also included are establishments primarily engaged in TV broadcasting and which produce taped TV program materials.⁷ Separate establishments primarily engaged in producing taped TV program materials are classified under another SIC number.⁸

There were 1,509 TV stations operating in the Nation in 1992.⁹ That number has remained fairly constant as indicated by the approximately 1,551 operating TV broadcasting stations in the Nation as of February 28, 1997.¹⁰ For 1992¹¹ the number of TV stations that produced less than \$10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments.¹² There are currently 95 full service analog TV stations,

⁴ 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833 (1996).

⁵ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, App. A-9 (1995) (ESA 1992 Census).

⁶ *Id.* See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes TV Broadcasting Station (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

⁷ ESA 1992 Census at App. A-9.

⁸ *Id.*; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and TV programs).

⁹ *Allocation Notice*, at App. C; ESA 1992 Census at App. A-9.

¹⁰ *Allocation Notice*, at App. C.

¹¹ A census for communications establishments is performed every five years ending with a "2" or "7." See ESA 1992 Census at III.

¹² The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

either operating or with approved construction permits on channels 60-69.¹³ In the *DTV Proceeding*, we adopted a DTV Table which provides only 15 allotments for DTV stations on channels 60-69 in the continental United States.¹⁴ There are seven DTV allotments in channels 60-69 outside the continental United States.¹⁵ Thus, the rules will affect approximately 117 TV stations; approximately 90 of those stations may be considered small businesses.¹⁶ These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-TV affiliated companies. We recognize that the rules may also impact minority-owned and women-owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0 percent) of 1,221 commercial TV stations in the United States.¹⁷ According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9 percent) of 1,342 commercial and non-commercial TV stations in the United States.¹⁸

¹³ See *Allocation Notice* at para. 2.

¹⁴ See *DTV Proceeding, Sixth Report and Order*, App.B.

¹⁵ *Allocation Notice* at para. 2 n.5.

¹⁶ We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 117 TV stations to arrive at 90 stations categorized as small businesses.

¹⁷ *Minority Commercial Broadcast Ownership in the United States*, U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program ("MTDP") (Apr. 1996). MTDP considers minority ownership as ownership of more than 50 percent of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

¹⁸ See Comments of American Women in Radio and TV, Inc. in MM Docket No. 94-149 and MM Docket No. 91-140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, *Women-Owned Business*, WB87-1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit SIC Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the Commission collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rulemaking, 10 FCC Rcd 2788, 2797 (1995).

There are currently 4,977 TV translator stations and 1,952 LPTV stations.¹⁹ Approximately 1,309 low power TV and TV translator stations are on channels 60-69²⁰ which could be affected by policies in this proceeding. The Commission does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of TV stations are designated under this analysis as potentially small businesses. Given this, LPTV and TV translator stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

(2) Alternative Classification of Small TV Stations

An alternative way to classify small TV stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity (EEO) rule for broadcasting.²¹ Thus, radio or TV stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.²² We estimate that the total number of commercial TV stations with four or fewer employees is 132 and that the total number of non-commercial educational

¹⁹ *Allocation Notice*, at App. C.

²⁰ *Allocation Notice* at para 2 n.3.

²¹ The Commission's definition of a small broadcast station for purposes of applying its EEO rule was adopted prior to the requirement of approval by the Small Business Administration pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. § 632(a). However, this definition was adopted after public notice and an opportunity for comment. *See* Petition for Rulemaking To Require Broadcast Licensees To Show Non-Discrimination in Their Employment Practices, Docket No. 18244, RM-1144, Report and Order, 23 FCC 2d 430 (1970).

²² *See, e.g.*, 47 C.F.R. § 73.3612 (requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395, Docket No. 21474, First Report and Order, 70 FCC 2d 1466 (1979). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *See* Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines, MM Docket No. 96-1611, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 5154 (1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees. *Id.* at para. 21.

TV stations with four or fewer employees is 136.²³ We do not know how many of these stations operate on Channels 60-69.

(b) Public Safety Entities

The public safety entities that will be affected by this Notice are governmental entities. The definition of a small governmental entity is one with a population of fewer than 50,000.²⁴ There are approximately 85,006 governmental entities in the Nation.²⁵ This number includes such entities as States, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number have populations of fewer than 50,000. However, this number includes 38,978 counties, cities, and towns, and, of those, 37,566, or 96 percent, have populations of fewer than 50,000.²⁶ The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the approximately 85,006 governmental entities, we estimate that 96 percent, or 81,600, are small entities that may be affected by our rules. We solicit comment on this estimate.

(c) Entities with regard to Priority Access Service

Concerning the provision of priority access service, commenters are requested to provide information regarding how many providers of CMRS, existing and potential, will be considered small businesses. "Small business" is defined as having the same meaning as the term "small business concern" under the Small Business Act.²⁷ A small business concern is one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by SBA. We seek comment as to whether this definition is appropriate in this context. Additionally, we request each commenter to identify whether it is a small business under this definition. If the commenter is a subsidiary of another entity, this information should be provided for both the subsidiary and the parent corporation or entity.

²³ We base this estimate on a compilation of 1995 Broadcast Station Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

²⁴ 5 U.S.C. § 601(5).

²⁵ 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

²⁶ *Id.*

²⁷ 15 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

The Commission has not yet developed a definition of small entities which respect to the provision of a CMRS service offering of priority access. Therefore, for entities not falling within other established SBA categories, the applicable definition of small entity is the definition under the SBA applicable to the "Communications Services, Not Elsewhere Classified" category. This definition provides that a small entity is one with \$11.0 million or less in annual receipts.²⁸ The Census Bureau estimates indicate that of the 848 firms in the "Communications Services, Not Elsewhere Classified" category, 775 are small businesses. While the Commission anticipates some CMRS providers would elect to provide priority access service, it is not possible to predict either how many, or what percentage, of these providers would be small entities.

(1) Cellular Radio Telephone Service

The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.²⁹ The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees.³⁰ We therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. That census shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.³¹ Therefore, even if all 12 of these large firms were cellular telephone companies, all of the remainder were small businesses under the SBA's definition. We assume that, for purposes of our evaluations and conclusions in this IRFA, all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, we do not know the number of cellular licensees, since a cellular licensee may own several licenses.

²⁸ 13 C.F.R. § 120.21, SIC Code 4899.

²⁹ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

³⁰ U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

³¹ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

(2) Broadband Personal Communications Service

The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to Section 24.720(b) of the Commission's Rules,³² the Commission has defined "small entity" for Block C and Block F licensees as firms that had average gross revenues of less than \$40 million in the three previous calendar years. This regulation defining "small entity" in the context of broadband PCS auctions has been approved by the SBA.³³

The Commission has auctioned broadband PCS licenses in all of its spectrum blocks A through F. We do not have sufficient data to determine how many small businesses under the Commission's definition bid successfully for licenses in Blocks A and B. As of now, there are 90 non-defaulting winning bidders that qualify as small entities in the Block C auction and 93 non-defaulting winning bidders that qualify as small entities in the D, E, and F Block auctions. Based on this information, we conclude that the number of broadband PCS licensees that would be affected by the proposals in this Notice includes the 183 non-defaulting winning bidders that qualify as small entities in the C, D, E, and F Block broadband PCS auctions.

(3) Specialized Mobile Radio

Pursuant to Section 90.814(b)(1) of the Commission's Rules,³⁴ the Commission has defined "small entity" for geographic area 800 MHz and 900 MHz SMR licenses as firms that had average gross revenues of less than \$15 million in the three previous calendar years. This regulation defining "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.³⁵

³² 47 C.F.R. § 24.720(b).

³³ See Implementation of Section 309(j) of the Communications Act — Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

³⁴ 47 C.F.R. § 90.814(b)(1).

³⁵ See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, Implementation of Sections 3(n) and 322 of the Communications Act — Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Implementation of Section 309(j) of the Communications Act — Competitive Bidding, PP Docket No. 93-253, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).

The proposals set forth in the Notice may apply to SMR providers in the 800 MHz and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service, nor how many of these providers have annual revenues of less than \$15 million.

The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities under the Commission's definition in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the proposals set forth in this Notice includes these 60 small entities.

No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz SMR licensees can be made, we assume, for purposes of our evaluations and conclusions in this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

(4) 220 MHz Service

Licensees for 220 MHz services that meet the definition of CMRS may be providers of priority access service if there is a demand for these services during emergencies and disasters. The Commission has classified providers of 220 MHz service into Phase I and Phase II licensees. There are approximately 2,800 non-nationwide Phase I licensees and 4 nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has estimated that there are approximately 900 potential Phase II licensees.

At this time, however, there is no basis upon which to estimate definitively the number of 220 MHz service licensees, either current or potential, that are small businesses. To estimate the number of such entities that are small businesses, we apply the definition of a small entity under SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.³⁶ However, the size data provided by the SBA do not allow us to make a meaningful estimate of the number of 220 MHz providers that are small entities because they combine all

³⁶ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

radiotelephone companies with 500 or more employees.³⁷ We therefore use the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. Data from the Bureau of the Census' 1992 study indicate that only 12 out of a total 1,178 radiotelephone firms which operated during 1992 had 1,000 or more employees — and these may or may not be small entities, depending on whether they employed more or less than 1,500 employees.³⁸ But 1,166 radiotelephone firms had fewer than 1,000 employees and therefore, under the SBA definition, are small entities. However, we do not know how many of these 1,166 firms are likely to be involved in the 220 MHz service.

To assist the Commission in this analysis, commenters are requested to provide information regarding how many total 220 MHz service entities, existing and potential, may offer a priority access service. In particular, we seek estimates of how many 220 MHz service entities, existing or potential, will be considered small businesses.

(5) Mobile Satellite Services (MSS)

The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.³⁹ According to the Census Bureau, there were a total of 848 communications services, NEC in operation in 1992, and a total of 775 had annual receipts of less than \$9,999 million.⁴⁰

Mobile Satellite Services or Mobile Satellite Earth Stations are intended to be used while in motion or during halts at unspecified points. These stations operate as part of a network that includes a fixed hub or stations. The stations that are capable of transmitting

³⁷ 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, Table 3, SIC Code 4812 (industry data adapted by the Office of Advocacy for the U.S. Small Business Administration).

³⁸ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC Code 4812 (issued May 1995).

³⁹ 13 C.F.R. § 120.121, SIC Code 4899.

⁴⁰ 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

while a platform is moving are included under Section 20.7(c) of the Commission's Rules⁴¹ as mobile services within the meaning of Sections 3(27) and 332 of the Communications Act.⁴² Those MSS services are treated as CMRS if they connect to the Public Switched Network (PSN) and also satisfy other criteria of Section 332. Facilities provided through a transportable platform that cannot move when the communications service is offered are excluded from Section 20.7(c).⁴³

The MSS networks may provide a variety of land, maritime and aeronautical voice and data services. There are eight mobile satellite licensees. At this time, we are unable to make a precise estimate of the number of small businesses that are mobile satellite earth station licensees and could be considered CMRS providers of priority access service.

(5) Other Commercial Mobile Radio Services

Other CMRS services may potentially be providers of priority access service if there is a demand for the transmission of voice, data, or text messages during emergencies and disasters.

a. Paging and Radiotelephone Service, and Paging Operations

The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the paging service. Under the proposal, a small business will be defined as either (1) a entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. Since the SBA has not yet approved this definition for paging companies, we utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁴⁴

The Commission estimates that the total current number of paging carriers is approximately 600. In addition, the Commission anticipates that a total of 16,630 non-nationwide geographic area licenses will be granted or auctioned. The geographic area licenses will consist of 2,550 Major Trading Area (MTA) licenses and 14,080 Economic Area

⁴¹ 47 C.F.R. § 20.7(c).

⁴² 47 U.S.C. §§ 153(27), 332.

⁴³ 47 C.F.R. § 20.7(c).

⁴⁴ 13 C.F.R. § 121.201, SIC 4812.

(EA) licenses. In addition to the 47 Rand McNally MTAs, the Commission is licensing Alaska as a separate MTA and adding three MTAs for the U.S. territories, for a total of 51 MTAs. No auctions of paging licenses have been held yet, and there is no basis to determine the number of licenses that will be awarded to small entities. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees, and that no reliable estimate of the number of paging licensees can be made, we assume, for purposes of this IRFA, that all of the current licensees and the 16,630 geographic area paging licensees either are or will consist of small entities, as that term is defined by the SBA.

Although the Notice requests comment concerning all CMRS providers, the number of paging licensees that elect to provide some form of priority access service may depend on whether there is a market for wireless data or message text transmissions in emergency and disaster environments. The number may also depend on whether two-way paging providers, rather than providers of traditionally one-way service, are eventually included under any priority access rules.

b. Narrowband PCS

The Commission has auctioned nationwide and regional licenses for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition. At present, there have been no auctions held for the MTA and Basic Trading Area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licensees and 2,958 BTA licensees will be awarded in the auctions. Those auctions, however, have not yet been scheduled. Given that nearly all radiotelephone companies have fewer than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, that all of the licensees will be awarded to small entities, as that term is defined by the SBA.⁴⁵

c. Air-Ground Radiotelephone Service

The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in Section 22.99 of the Commission's rules.⁴⁶ Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.⁴⁷ There are approximately

⁴⁵ See *id.*

⁴⁶ 47 C.F.R. § 22.99.

⁴⁷ 13 C.F.R. § 121.201, SIC 4812.

100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

We have reduced burdens wherever possible. To minimize any negative impact, however, we propose certain incentives for small entities, which will redound to their benefit. While public safety entities will be required to submit regional plans (to enable the Commission to accommodate regional needs and preferences), they will be able to pool their resources in developing such plans. The regulatory burdens we have retained, such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing significant economic impact on small entities. We seek comment on significant alternatives commenters believe we should adopt.

With respect to priority access service, we are seeking comment regarding whether the provision of priority access service by wireless carriers should be on a voluntary basis. Thus, small entities at their option can elect to provide the service should they determine that there is a competitive market opportunity to do so. In addition, we are proposing that in providing priority access service, providers of certain CMRS services are to be insulated from liability under Section 202 of the Communications Act.⁴⁸ We also seek comment on alternatives regarding the priority access issues raised in the Notice.

F. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

⁴⁸ 47 U.S.C. § 202.

APPENDIX B**List of Pleadings****Public Safety Communications**

The following is a list of parties filing comments and reply comments in response to the Notice of Proposed Rulemaking in The Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96-86, 11 FCC Rcd 12460 (1996).

Comments

2GHz MSS Coalition (2GHz Coalition)
ADI Ltd. (ADI)
Aeronautical Radio, Inc. (ARINC)
Alarm Industry Communications Committee (AICC)
American Petroleum Institute (API)
American Association of State Highway and Transportation Officials (AASHTO)
American Automobile Association (AAA)
Ameritech Mobile Services, Inc. (Ameritech)
AMSC Subsidiary Corporation (AMSC)
APCO Project 25 (Project 25)
Association of American Railroads (AAR)
Association of Federal Communications Consulting Engineers (AFCCE)
Association of Public-Safety Communications Officials-International, Inc. (APCO)
Baldwin Fire District Operations (Baldwin)
California Department of General Services, Telecommunications Division (Cal. Telecom.)
California Public Safety Radio Association (CPRA)
Clackamas County (Clackamas)
Dallas, City of (Dallas)
Digital Voice Systems, Inc. (DVSI)
E. F. Johnson Company (EFJohnson)
Elk Grove Village Fire Department (Elk Grove)
Ericsson Inc. (Ericsson)
Federal Law Enforcement Wireless Users Group (FLEWUG)
Federal Bureau of Investigation (FBI)
Florida Department of Management Services (FDMS)
Fort Worth, City of (Fort Worth)
Garden City Fire Department (Garden City)

Gardena, City of (Gardena)
Glendale, City of (Glendale)
Hamilton, County of (Hamilton)
Hennepin County Sheriff, Office of the (Hennepin)
Illinois State Toll Highway Authority (Illinois Tollway)
Industrial Telecommunications Association, Inc. (ITA)
Intelligent Transportation Society of America (ITSA)
International Association of Chiefs of Police (IACP)
International Municipal Signal Association and the International Association of
Fire Chiefs (IMSA/IAFC)
Island County Emergency Services Communications Center (I-COM)
Johnson County Kansas (Johnson County)
Kansas Division of Emergency Management Committee (Kansas-EMC)
La Grande, City of (La Grande)
Long Beach, City of (Long Beach)
Los Angeles, County of (plus addendum) (LA County)
Los Angeles Police Department (LAPD)
Maxon American, Inc. (Maxon)
Mesa, City of (Mesa)
Metro-North Police (MTA)
Mineola Fire Department (Mineola)
Minnesota Department of Transportation (MnDOT)
Motorola, Inc. (Motorola)
Nassau County
National Rural Electric Cooperative Association (NRECA)
National Association of State Telecommunications Directors (NASTD)
National League of Cities (NLC)
Nebraska Public Power District (Nebraska PPD)
Nebraska, State of (Nebraska)
New York, City of, Fire Department (NYFD)
New York State Thruway Authority (NYSTA)
New Hampshire, State of (New Hampshire)
New York State Police (NYSP)
New York, City of, DoITT (NYDoITT)
New York City Transit Authority (NYCT)
Nextel Communications, Inc. (Nextel)
Newport Beach Police Department (Newport Beach)
Nippon Telegraph and Telephone Corporation (Nippon)
North Bellmore Fire District (N. Bellmore)
Northern California Chapter of the Association of Public/Safety Officials (Nor. Cal. APCO)
Ohio Department of Administrative Services (Ohio-DAS)

Orange, County of, California (Orange County)
Orange, County of, Sheriff-Coroner Department, California (Orange County S-C)
Oregon Chapter, Associated Public Safety Communications Officers, Inc. (Oregon APCO)
Orlando, City of (Orlando)
Overland Park, City of (Overland Park)
Owensboro Kentucky, City of (Owensboro)
Powell, John S. (including Addendum (Powell)
Preble County 9-1-1 Advisory Board (Preble County)
Prince George's County (PG County)
Prince William, County of (PW County)
Public Safety Wireless Advisory Committee (Final Report) (PSWAC)
Quantum Radionics Corporation (Quantum)
Racal Communications (Racal)
Region-20 Public Safety Review Committee (Region-20)
Richardson, City of (Richardson)
Rural Cellular Association (RCA)
San Diego, City of (San Diego)
Securicor Radiocom Limited (Securicor)
SNOPAC 9-1-1 Communications (SNOPAC)
South Bay Regional Public Communications Authority (South Bay)
South Nyack Grand View Police Department (SNGVPD)
Suffolk, County of, Police Department (Suffolk)
Telecommunications Industry Association (TIA)
Texas Department of Public Safety (Texas-DPS)
Texas Advisory Commission on State Emergency Communications (Texas-ACSEC)
Thomas Jefferson Inc. (Jefferson)
Transcript International, Inc. (Transcript)
Tri-Com 911 Dispatch System (Tri-Com)
Union County, Sheriff of (Union County)
University of California, Irvine (UC Irvine)
US Dept of Transportation (DOT)
UTC, the Telecommunications Association (UTC)
Virginia, Commonwealth of, Dept of State Police (VA State Police)
Whatcom County Sheriff's Office (Whatcom)
Wisconsin State Patrol (WI State Patrol)
Yonkers, City of (Yonkers)

Reply Comments

Addison Fire Protection Dist #1 (Addison)
Airtouch Paging (Airtouch)
American Association of State Highway and Transportation Officials (AASHTO)
Ameritech Mobile Services, Inc. (Ameritech)
Arch Communications Group, Inc. (Arch)
Association of Public-Safety Communications Officials-International, Inc. (APCO)
Association of American Railroads (AAR)
Cellular Telecommunications Industry Association (CTIA)
E.F. Johnson (EFJohnson)
East Rockaway Fire Department (East Rockaway)
Ericsson, Inc. (Ericsson)
Floral Park Fire Department (Floral Park)
Forestry-Conservation Communications Association (FCCA)
Industrial Telecommunications Association, Inc. (ITA)
Intelligent Transportation Society of America (ITS)
International Taxicab and Livery Association (ITLA)
International Municipal Signal Association and the International Association of Fire Chiefs (IMSA/IAFC)
Lakeview Fire District (Lakeview)
Los Angeles, County of (LA County)
Lucas, County of (Lucas)
Manufacturers Radio Frequency Advisory Committee, Inc. (MRFAC)
Margate Fire Department (Margate)
Marin County, The Board of Supervisors of (Marin)
Massapequa Fire District (Massapequa)
Meadowmere Park Fire Department (Meadowmere)
Motorola, Inc. (Motorola)
National Association of Broadcasters (NAB)
National Communications System (NCS)
Nevada Department of Transportation (NDOT)
New York, the City of, Department of Correction (NYDC)
New Hyde Park Fire Department (New Hyde Park)
Nippon Telephone and Telegraph Corporation (Nippon)
Ohio Department of Transportation (Ohio-DOT)
Plainview Fire Department (Plainview)
Project 25 Steering Committee (Project 25)
RELM Communications, Inc. (RELM)
Securicor Radiocoms Limited (Securicor)
Sherman County Communications and Emergency Management (Sherman)

Society of Broadcast Engineers, Inc. (SBE)
Special System Services (Special Systems)
Strategic Policy Research (SPR)
Uniondale Fire Department (Uniondale)
United States Department of Transportation (DOT)
UTC, the Telecommunications Association (UTC)
Valley Stream Fire Department (VSFD)
Westbury Fire Department (Westbury)
Westchester County Fire Training Center (Westchester)

Priority Access Service

The following is a list of parties filing comments and reply comments in response to the Public Notice, Petition for Rulemaking Filed, Commission Seeks Comment on Petition for Rulemaking filed by National Communications System, DA 96-604, WT Docket No. 96-86 (released Apr. 18, 1996).

Comments

Association of Public-Safety Communications Officials-International, Inc. (APCO)
AT&T Wireless Services, Inc. (AT&T)
Bell Atlantic Nynex Mobile (BANM)
Bell Communications Research, Inc. (BellCore)
BellSouth Corp. and BellSouth Cellular Corp. (BellSouth)
Cellular Telecommunications Industry Association (CTIA)
Dixon, Alan (Dixon)
Florida Department of Management Services (FDMS)
GTE Mobilnet (GTEM)
Los Angeles County Sheriff's Department and the County of Los Angeles,
Internal Services Department (LA County Sheriff)
National Association of State Telecommunications Directors (NASTD)
National Communications System (NCS)
National Emergency Number Association (NENA)
Oregon State Police (Oregon)
Southwestern Bell Mobile System, Inc. (SBMS)
Tennessee Emergency Management Agency (TEMA)
Texas Advisory Commission on State Emergency Communications (Texas-ACSEC)
UTC, the Telecommunications Association (UTC)
Vanguard Cellular Systems, Inc. (Vanguard)

Virginia, Commonwealth of, Dept of Military Affairs,
Army National Guard (VA National Guard)
Virginia, Commonwealth of, Dept of State Police (VA State Police)
Washington State Emergency Management (WSEM)

Reply Comments

AT&T Wireless Services, Inc. (AT&T)
National Communications System (NCS)
National Emergency Number Association (NENA)
Southwestern Bell Mobile Systems, Inc. (SBMS)